

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOBBY MILLER,

Petitioner,
v.

DUNCAN MACLAREN,

Respondent,

Case No. 2:14-CV-13797
JUDGE PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

ORDER DIRECTING THE CLERK OF THE COURT TO TRANSFER THE APPLICATION
TO PROCEED WITHOUT PREPAYING FEES OR COSTS ON APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

On June 25, 2015, this Court denied the petition for writ of habeas corpus and declined to issue a certificate of appealability or leave to appeal *in forma pauperis*. *Miller v. Maclaren*, No. 2:14-CV-13797, 2015 WL 3915890 (E.D. Mich. June 25, 2015).

On July 23, 2015, petitioner filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. On the same day, petitioner filed an application for leave to appeal *in forma pauperis* with this Court. For the reasons stated below, the Court orders that the motion for leave to appeal *in forma pauperis* be transferred to the United States Court of Appeals for the Sixth Circuit.

A notice of appeal generally “confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.” *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985)(citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)(per curiam));. *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992). Petitioner’s notice of appeal divests this Court of jurisdiction to

consider his motion that he be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. *See Johnson v. Woods*, No. 5:12–11632, 2013 WL 557271, p. 2 (E.D. Mich. February 13, 2013); *Glick v. U.S. Civil Service Com’n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983); *Brinton v. Gaffney*, 560 F. Supp. 28, 29-30 (E.D. Pa. 1983). Because jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, petitioner’s motion to proceed *in forma pauperis* on appeal would be more appropriately addressed to the Sixth Circuit. In the interests of justice, this Court can order that the application to proceed *in forma pauperis* be transferred to the Sixth Circuit for that court’s consideration. *See Baker v. Perry*, No. 2:12–10424, 2012 WL 6097323, p. 2 (E.D. Mich. December 6, 2012).

IT IS HEREBY ORDERED that the Clerk of the Court transfer petitioner’s “Application to Proceed Without Prepaying Fees and Costs on Appeal” [Dkt. # 10] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: August 31, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 31, 2015.

s/Deborah Tofil
Case Manager